

These are the tentative rulings for civil law and motion matters set for Thursday, November 29, 2012, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 28, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0055936      Caritas Acquisitions I, LLC vs. Bell, Dick**

Appearance required on the Application for Stay of Execution of Judgment.

**2. M-CV-0056556      Jarvis Enterprises, L.P. vs. Shapiro, Gennady**

Appearance required.

As an initial matter, the court notes that the answer filed by Exclusive Motors LLC in pro per. A corporation cannot appear, either in pro per or through an officer or agent, in an action without an attorney. (*Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 199; see also *Roddis v. All-Coverage Ins. Exchange* (1967) 250 Cal.App.2d 304, 311; *Himmell v. City Council* (1959) 169 Cal.App.2d 97, 100; *Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898.) The answer filed by Exclusive Motors LLC, filed on November 2, 2011, is stricken.

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. (CCP§1170.7) A party is entitled to bring a motion for summary judgment where there are no triable issues of fact. (CCP§437c.) The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) One a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property under foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. (CCP§1161a(b)(3).)

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Plaintiff's SSUMF Nos. 1-5.) Plaintiff also shows that defendant was served with a notice to quit by posting that was subsequently mailed. (Id. at Nos. 6-8.) Finally, plaintiff submits evidence that defendant remains on the property after the expiration of the notice. (Id. at Nos. 9.)

As plaintiff has made a prima facie showing in support of summary judgment, the burden now shifts to the defendant. The appearance of all parties is required at the hearing as defendant may appear by counsel to provide evidence of triable issues of material fact either in writing or orally at the hearing. (CRC Rule 3.1351(b), (c).)

**3. M-CV-0056626      FAOF Meridian, LLC vs. Noguchi, Linda E.**

Plaintiff's Motion to Appoint Counsel is denied. The appointment of counsel under the Servicemembers Civil Relief Act (50 USC Appx 521 et seq) is appropriate under two circumstances. The first is where the court, after granting a mandatory stay, has denied a discretionary stay while the servicemember is deployed or his or her whereabouts are unknown. (50 USC Appx 522.) The second is when the servicemember has not made an appearance in the action, so court cannot proceed with a default judgment without first appointing counsel. (50 USC Appx 521.) Since neither alternative is applicable in this case, the motion is denied.

**4. S-CV-0020974      Burris, Wes & Michelle vs. Armstrong, Lisabeth**

The Motion to Unseal Documents is dropped. No moving papers were filed with the court.

**5. S-CV-0027932      Maria Montessori Charter Acad vs. Rocklin Un. School Dist**

Defendant/Cross-Complainant's Motion for Leave to File Amendment to the First Amended Cross-Complaint is granted pursuant to CCP§473. Defendant's supplemental request for judicial notice is denied.

**6. S-CV-0027942      Donohue, Michael Jr. vs. Westlake, John, et al**

The Motion for Attorney's Fees is continued, on the court's own motion, to December 6, 2012 at 8:30 a.m. to be heard by the Honorable John Cosgrove.

**7. S-CV-0028577                      Domingues, Stephen, et al vs. Sturgill Care Home, et al**

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, the hearing shall be held at 8:30 a.m. in Department 42:

Defendants' Motion for Summary Judgment

Preliminary Matters

The court notes that the defendant requests summary adjudication in the body of their moving papers but failed to notice such a request in their original notice of motion or the amended notice of motion. Summary adjudication cannot be granted where the motion only notices summary judgment. (Jimenez v. Protective Life Ins. Co. (1992) 8 Cal.App.4th 528, 534-535; Hawkins v. Wilton (2006) 144 Cal.App.4th 936, 949.) Thus, the court shall only consider the request for summary judgment that was noticed by the defendants. To the extent that the defendants' seek summary adjudication, the request is denied as the defendants did not properly notice the motion.

Ruling on Objections

Defendants' objections to the Wilson declaration and the Stiegler declaration are overruled. The objections fail to comport to the requirements of California Rules of Court, Rule 3.1354(b).

Ruling on Motion

Defendants' motion is denied.

The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (California Code of Civil Procedure section 437c(c).) A moving defendant may prevail by presenting evidence that conclusively negates an element of plaintiff's cause of action or evidence that shows one or more elements of the cause of action cannot be established. (California Code of Civil Procedure section 437c(p)(2); Aguilar v. Atlantic Richfield Company (2001) 25 Cal.4th 826, 853.)

In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (Aguilar v. Atlantic Richfield Company (2001) 25 Cal.4th 826, 843.) "Summary judgment is a drastic remedy to be used sparingly, and any doubts about the propriety of summary judgment must be resolved in favor of the opposing party. [Citations.]" (Mateel Environmental Justice Foundation v. Edmund A. Gray Co. (2003) 115 Cal.App.4th 8, 17.)

Defendants contend that summary judgment should be granted because they owed no duty to control the decedent's movements. (Defendants' Memorandum p. 14:10-16:17.) They contend that the decedent was a developmentally disabled adult that was capable of independent living and did not require constant supervision. (Defendants' SSUMF No. 5.) The defendants also assert that the decedent did not have a history of wandering away from the facility. (Id. at Nos. 8, 9.) They state that the decedent had part-time employment and was able to handle her own money. (Id. at Nos. 10-12.) The defendants contend that decedent was placed in their level 2 facility by Alta California Regional Center. (Id. at Nos. 17, 18.) They claim to have been actively involved in the development and implementation of the decedent's program plans in conjunction with the decedent's conservator, health care professionals, and service providers. (Id. at No. 21.)

A summary judgment motion must be supported by affidavits, declarations, admissions to interrogatories, depositions, and matters that may be judicially noticed. California Code of Civil Procedure section 437c(b).) To meet their initial burden the defendants must present evidence that precludes a reasonable trier of fact from finding it was more likely than not that the material fact was true or that the plaintiff does not possess evidence to establish an element of the claim. (Kahn v. East Side Union High School Dist. (2003) 31 Cal.4th 990, 1002-1003.) It is only after this burden is met that the burden shifts to the plaintiff to establish a triable issue of material fact. (California Code of Civil Procedure section 437c(p)(2); Aguilar v. Atlantic Richfield Company, supra, at p. 849.) For each of the material facts mentioned above, the defendants refer to the declaration of defendant Terry Sturgill. Although defendants refer to Alta California Regional Center's involvement in the decedent's care, there is no declaration from a service provider in support of the motion. There are also no declarations from health care providers discussing the decedent's medical diagnosis. A conservatorship is discussed but, again, there are no documents before the court regarding this conservatorship. The evidence defendants present to the court is insufficient to allow a reasonable trier of fact to conclude that any of the material facts are, more likely than not, true. Nor have the defendants presented sufficient evidence for the court to make a finding that the plaintiff does not possess sufficient evidence to establish any of the three causes of action. Defendants have failed to meet their burden, thus, the motion is denied.

**8. S-CV-0028646                      Energy 2001 vs. Pacific Gas and Electric Co., et al**

The Motion to Compel Discovery is continued, on the court's own motion, to December 6, 2012 at 8:30 a.m. to be heard in conjunction with the Demurrer.

**9. S-CV-0028824                      Carrera, Richard, et al vs. Polito, Dennis**

Defendant's Motion to Compel Further Responses to Discovery is continued to December 6, 2012 at 8:30 a.m. in Department 40. Plaintiffs were not afforded the full statutory 16 court days for notice of the hearing. Plaintiffs are allowed to file any supplemental briefing on or before December 3, 2012.

Defendant's Motion for Protective Order is granted. Plaintiffs shall give notice to any known or reasonably ascertainable potential defendants and an opportunity for those potential defendants to participate in the testing protocol and attend the aircraft testing. Plaintiff shall also incorporate a testing protocol into the inspection and pay for any and all storage facility charges associated with the inspection of the aircraft wreckage.

Defendant is awarded sanctions in the amount of \$3,300.00. (CCP§2031.060(h).)

If oral argument is requested, plaintiffs' request for telephonic appearance is granted. The court will contact counsel at the time the matter is called for hearing.

**10. S-CV-0029748      Earnshaw, Steven, et al vs. Squaw Valley Dev. Co., et al**

The Petition to Compromise Minor's Claim is granted. If oral argument is requested, the appearance of the minor at the hearing is waived. Petitioner's request to appear by telephone is also granted. If oral argument is requested, the court will contact counsel at the time the matter is called for hearing.

**11. S-CV-0030534      Brown, Jonathan vs. Guyan, Teresa L.**

Cross-defendant's demurrer to the first amended cross-complaint is sustained with leave to amend. A shareholder may bring a direct action, as an individual, against a corporation where the duty breached is owed directly to the shareholder. (*Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 107; *Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 297.) As currently pled, the first cause of action for breach of fiduciary duty does not sufficient allege the duty owed to cross-complaint directly as an individual shareholder to establish the action is direct rather than derivative in nature.

The amended cross-complaint shall be filed and served on or before December 21, 2012.

**12. S-CV-0030728      Kwan, Tim, et al vs. Lafler, Moore, Connerty, Webb, et al**

The Demurrer is continued, on the court's own motion, to December 6, 2012 at 8:30 a.m. in Department 40.

**13. S-CV-0031106      Talley, Kuniko vs. Mortgage Investors Group, et al**

The Demurrer is continued, on the court's own motion, to be heard in conjunction with Plaintiff's Motion for Relief from Judgment Based on Attorney Neglect on December 13, 2012 at 8:30 a.m. in Department 40.

**14. S-CV-0031190            Zirelli, Louis J. vs. Quality Loan Services, Inc.**

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, the hearing shall be held at 8:30 a.m. in Department 42:

Appearance required on Defendant's Demurrer.

**15. S-CV-0031194            Kennedy, Michael, et al vs. Wells Fargo Bank, N.A., et al**

The Demurrer and Motion to Strike are dropped a full dismissal was entered on November 15, 2012.

**16. S-CV-0031324            Booher, Rich et.al. vs. Garman, Michael D. et.al.**

The Demurrer to the Cross-Complaint is dropped. A first amended cross-complaint was filed on November 26, 2012.

**17. S-CV-0031454            OnDemand Primary Care and Nursing vs. Cheema, Chandan**

The Motion to Strike is dropped pursuant to the Stipulation and Order entered on November 26, 2012.

**18. S-CV-0031505            Arnold, Jearldine vs. Fitzsimmons, Steve**

Appearance required on Respondent's Motion to Correct Clerical Error.

**19. S-CV-0031658            Jackman, Holly J., et al vs. Owens, Bruce, et al**

Defendants' Motion to Strike Punitive Damages is granted. Defendants request for judicial notice is granted.

As to the first cause of action, the motion is granted without leave to amend as the plaintiffs have conceded that punitive damages are not applicable to this cause of action.

As to the second, third, fourth, fifth, and sixth causes of action, the motion is granted with leave to amend. These causes of action plead oppression, fraud, and/or malice in a conclusory fashion that is insufficient to state a claim for punitive damages. (Civil C§3294; *Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872.)

The amended complaint shall be filed and served on or before December 21, 2012.

**20. S-CV-0031908            McCann, Michael, et al vs. Deutsche Bank National Trust Co.**

The Preliminary Injunction is dropped. No moving papers were filed with the court.

**21. S-CV-0031924                      Provan, Jennifer vs. Henderson, Jeff, et al**

Appearance required on the Petition to Approve Minor's Compromise. Petitioner has not attached a copy of the proposed quote for the annuity policy. Petitioner also must clarify the date of the final plastic surgery procedure. The appearance of the minor at the hearing is waived.

**22. S-CV-0031982                      Castellini, Gail et al vs. Harper, R. Ellis**

The Motion to Stay the Proceedings is continued, on the court's own motion, to December 20, 2012 at 8:30 a.m. in Department To Be Assigned. The court apologizes for any inconvenience to the parties.

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